

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG

**MARY WOLFE and ROBERT WOLFE,
husband and wife**

ELECTRONICALLY
FILED
Jun 02 2021
U.S. DISTRICT COURT
Northern District of WV

Plaintiffs,

v.

CIVIL ACTION NO. 1:21-CV-71 (Keeley)
CIRCUIT COURT NO. 21-C-104

**KAUFMAN REALTY & AUCTIONS OF
WEST VIRGINIA, LLC,**

Defendant.

NOTICE OF REMOVAL

NOW COMES the Defendant, Kaufman Realty & Auctions of West Virginia, LLC (referred to at times herein as “Defendant”), by counsel, Nathaniel D. Griffith, Esq. and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and hereby give notice that, on the grounds set forth below, they are removing the above styled action from the Circuit Court of Harrison County, West Virginia to the United States District Court for the Northern District of West Virginia, at Clarksburg. In support thereof, the Defendant states and avers as follows:

1. According to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” The original jurisdiction of this Court includes “all civil actions where the amount in controversy exceeds the sum or value of \$75,000, exclusive of

interest and costs, and is between [...] citizens of different States[.]” 28 U.S.C. § 1332(a)(1).

2. This action is removable pursuant to 28 U.S.C. § 1332(a), as this is a civil action wherein the matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests and costs, and it is between citizens of different states.

3. Upon information and belief, a complete copy of the Harrison County Circuit Court file, including true and correct copies of all process, pleadings, and orders served in the state court action, will be submitted to this Court by the Circuit Clerk of Harrison County, West Virginia.

See current Docket Sheet for Civil Action No. 21-C-104, attached hereto as “Exhibit A.”

4. Pursuant to 28 U.S.C. § 1441(a), any civil action brought in a State of which the district courts of the United States have jurisdiction may be removed by the Defendant to the district court of the United States for the district and division embracing where such action is pending.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of West Virginia because a substantial part of the events or omissions allegedly giving rise to the claims contained in the Complaint allegedly occurred in this district.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant is concurrently serving on Plaintiffs the *Notice of Removal* and also filing in the Circuit Court of Harrison County, West Virginia, a “Notice of Filing of Notice of Removal to Federal Court”. *See Notice of Filing of Notice Removal to Federal Court, attached hereto as “Exhibit B.”*

Timeliness of Removal:

7. This civil action was commenced by Plaintiffs, Mary and Robert Wolfe, on or about April 26, 2021. Plaintiffs filed their Complaint in the Circuit Court of Harrison County, West

Virginia. The matter was designated Civil Action No. 21-C-104 by the Circuit Court of Harrison County, West Virginia. *See Complaint, attached hereto as "Exhibit C."*

8. The West Virginia Secretary of State accepted service on behalf of Defendant on May 4, 2021. *See West Virginia Secretary of State service of process information for Kaufman Realty & Auctions of West Virginia, LLC, attached hereto as "Exhibit D."*

9. Pursuant to 28 U.S.C. § 1446(a) "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter."

10. However, the thirty (30) day period for removal begins to run when the defendant actually receives a copy of the complaint, not when the complaint is accepted by a statutory agent such as the Secretary of State. *Martin-Evans v. Chesapeake Appalachia, LLC*, No. 5:15CV87, 2015 WL 5076992, at *4 (N.D.W. Va. Aug. 27, 2015) (citing *Gordon v. Hartford Fire Ins. Co.*, 105 Fed.Appx. 476, 480 (4th Cir.2004)).

11. In this case, the Complaint was delivered to Defendant on May 21, 2021. *Exhibit E*. Since June 20, 2021 is a Sunday, the deadline for removal on behalf of Defendant is June 21, 2021. *See Fed. R. Civ. P. 6(a)(1)(C).*

12. Accordingly, this *Notice of Removal* is timely filed.

Diversity of Citizenship:

13. Plaintiffs are a citizens and residents of West Virginia. *Exhibit C at ¶ 1.*

14. Defendant, Kaufman Realty & Auctions of West Virginia, LLC, is a foreign corporation organized under the laws of Ohio. *Exhibit C at ¶ 2.* Additionally, Defendant, Kaufman Realty & Auctions of West Virginia, LLC has its principal office in Ohio. *See West Virginia Secretary of State Business Organization Detail, attached hereto as "Exhibit F"; Exhibit C at ¶ 2.*

15. Therefore, diversity of citizenship exists as this an action between citizens of different states.

Amount in Controversy:

16. This case arises out of an accident that occurred on June 27, 2019. Plaintiffs assert that an “employee or owner” of Defendant “knocked a 45-pound concrete saw from an upper [shelf], causing it to fall and strike Plaintiff Mary Wolfe directly on the head.” *Exhibit C at ¶ 8.* Plaintiffs allege that as a result of the accident, Plaintiff Mary Wolfe “a severe and permanent traumatic brain injury, among other injuries” including “cognitive deficits, headaches, tinnitus, dizziness, visual deficits, cervical and thoracic back trauma and the exacerbation of a left knee injury.” *Exhibit C at ¶ 9.* Additionally, Plaintiff Robert Wolfe seeks damages for loss of consortium. *Exhibit C at ¶¶ 12-13.*

17. Moreover, on or about May 7, 2021, Plaintiffs made a demand well in excess of the amount-in-controversy requirement.

18. Thus, pursuant to 28 U.S.C. § 1446(c)(2)(B), the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

WHEREFORE, Defendant states that the removal of the above-captioned civil action from the Circuit Court of Harrison County to the United States District Court for the Northern District of West Virginia, at Clarksburg, is proper.

Dated this 2nd day of June, 2021.

**Defendant, Kaufamn Realty & Auctions of
West Virginia, LLC,
By Counsel:**

/s/: Nathaniel D. Griffith

Nathaniel D. Griffith, WV State Bar No. 11362

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendant, does hereby certify on this 2nd day of June, 2021, that a true copy of the foregoing "**NOTICE OF REMOVAL**" was served upon opposing counsel by electronically filing the same with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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/s/ Nathaniel D. Griffith

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